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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

DAVID PALMER, Plaintiff, v. TIMOTHY MULCAHY, Defendant.	CASE NO. 08-CV-1100 L JMA Assigned to The Hon. M. James Lorenz **DEFENDANT'S ANSWER TO PLAINTIFF'S COMPLAINT** [DEMAND FOR JURY TRIAL] Suit Filed: June 23, 2008 Trial Date: None

Comes now defendant TIMOTHY MULCAHY, and answers plaintiff DAVID PALMER's complaint as follows:

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

1. Defendant admits that this matter is within the Admiralty and Maritime jurisdiction of this Court as set forth in paragraph 1of plaintiff's complaint.

2. Defendant admits that he was the owner of the vessel CALOGERA, and that he resides in Encinitas, California, but denies the remaining allegations set forth in paragraph 2 of plaintiff's complaint.

3. Defendant admits that he paid plaintiff $32,305.00 during 2005 and 2006, but denies the remaining allegations set forth in paragraph 3 of plaintiff's complaint.

4. Defendant admits that he and plaintiff were fishing on the CALOGERA on or

about June 24, 2006, but denies the remaining allegations set forth in paragraph 4 of plaintiff's complaint.

5. Defendant denies the allegations in paragraph 5 of plaintiff's complaint.

6. Defendant admits that plaintiff received emergency medical treatment at the Santa Barbara Cottage Hospital, but denies the remaining allegations set forth in paragraph 6 of plaintiff's complaint.

7. Defendant denies the allegations of paragraph 7 of plaintiff's complaint.

AFFIRMATIVE DEFENSES

8. As a First Affirmative Defense, defendant alleges that plaintiff's complaint fails to set forth claims upon which relief can be granted.

9. As a Second Affirmative Defense, defendant alleges that plaintiff was careless, negligent and/or reckless in and about the matters alleged in the complaint, and such conduct caused or contributed to all of plaintiff's damages, if any.

10. As a Third Affirmative Defense, defendant alleges that the injuries complained of in the complaint, if and to the extent they occurred, which is expressly denied, pre-existed and/or were sustained after the alleged incident referred to in the complaint.

11. As a Fourth Affirmative Defense, defendant alleges that the injuries complained of in the complaint, if and to the extent they occurred, which is expressly denied, were neither caused nor exacerbated by the events alleged in the complaint.

12. As a Fifth Affirmative Defense, defendant alleges that plaintiff failed to mitigate his damages, if any, as required by law.

13. As a Sixth Affirmative Defense, defendant alleges that he is entitled to limit his liability, if any, pursuant to 46 U.S.C. § 30505, *et seq.*, including without limitation 46 U.S.C. § 30506.

14. As a Seventh Affirmative Defense, plaintiff's claims are barred by the doctrines of waiver and estoppel.

15. As an Eighth Affirmative Defense, defendant alleges that plaintiff's damages, if

any, resulted from plaintiff's wrongful and/or intentional conduct.

16. As a Ninth Affirmative Defense, to the extent that plaintiff has made or makes an election of remedies to proceed under, and receive workers' compensation Law and/or Longshoreman and Harbor Workers Compensation benefits, defendants are entitled to a credit for all payments made to plaintiff pursuant thereto.

17. As a Tenth Affirmative Defense, plaintiff's claims are barred by the doctrine of laches.

18. As an Eleventh Affirmative Defense, plaintiff's injuries, if any, have reached maximum medical improvement.

WHEREFORE, defendant demands judgment against plaintiff, as follows:

1. For judgment that defendant has no liability to plaintiff;

2. For costs, expenses and attorneys fees according to proof; and

3. For such other and further relief as the Court may deem just and proper.

DATED: August 21, 2008 SOLOMON WARD SEIDENWURM & SMITH, LLP

By: /s/ William N. Kammer
WILLIAM N. KAMMER
MICHAEL M. VASSEGHI
Attorneys for TIMOTHY MULCAHY

DEMAND FOR JURY TRIAL

Defendant hereby demands a jury trial pursuant to Federal Rules of Civil Procedure, Rule 38(b).

DATED: August 21, 2008 SOLOMON WARD SEIDENWURM & SMITH, LLP

By: /s/ William N. Kammer
WILLIAM N. KAMMER
MICHAEL M. VASSEGHI
Attorneys for TIMOTHY MULCAHY

CERTIFICATE OF SERVICE

I caused **DEFENDANT'S ANSWER TO PLAINTIFF'S COMPLAINT AND DEMAND FOR JURY TRIAL** to be served in the following manner:

Electronic Mail Notice List

The following are those who are currently on the list to receive e–mail notices for this case.

James Winston Gleave LAW OFFICES OF JAMES WINSTON GLEAVE 1901 First Avenue, Suite 310 San Diego, California 92101 Telephone No.: 619.238.0677 Fax No.: 619.238.4559	**Attorneys for Plaintiff DAVID PALMER**

Manual Notice List

The following is the list of attorneys who are not on the list to receive e–mail notices for this case (who therefore require manual noticing).

None.

/s/William N. Kammerr
WILLIAM N. KAMMER